

HOUSE BILL No. 1076

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1.

Synopsis: Confiscation of terrorist assets. Provides that a vehicle, money, and other assets may be seized if used to commit, attempt to commit, or conspire to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism. Establishes criteria for disbursement of seized money and the proceeds from property sold by the sheriff.

Effective: July 1, 2002.

Ayres, Kuzman, Sturtz, Alderman

January 8, 2002, read first time and referred to Committee on Rules and Legislative Procedures.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1076

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-24-1-1, AS AMENDED BY P.L.17-2001,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 1. (a) The following may be seized:

4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:

8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:

11 (i) Dealing in or manufacturing cocaine, a narcotic drug, or
12 methamphetamine (IC 35-48-4-1).

13 (ii) Dealing in a schedule I, II, or III controlled substance
14 (IC 35-48-4-2).

15 (iii) Dealing in a schedule IV controlled substance
16 (IC 35-48-4-3).

17 (iv) Dealing in a schedule V controlled substance

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- 1 (IC 35-48-4-4).
 2 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 3 (vi) Possession of cocaine, a narcotic drug, or
 4 methamphetamine (IC 35-48-4-6).
 5 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 6 (viii) Dealing in marijuana, hash oil, or hashish
 7 (IC 35-48-4-10).
 8 (B) Any stolen (IC 35-43-4-2) or converted property
 9 (IC 35-43-4-3) if the retail or repurchase value of that property
 10 is one hundred dollars (\$100) or more.
 11 (C) Any hazardous waste in violation of IC 13-30-6-6.
 12 **(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of**
 13 **mass destruction (as defined in IC 35-41-1-29.4) used to**
 14 **commit, used to attempt to commit, or used to conspire to**
 15 **commit an offense under IC 35-47 as part of or in**
 16 **furtherance of an act of terrorism (as defined by**
 17 **IC 35-41-1-26.5).**
 18 (2) All money, negotiable instruments, securities, weapons,
 19 communications devices, or any property **used to commit,**
 20 **attempt to commit, or conspire to commit an offense under**
 21 **IC 35-47 as part of or in furtherance of an act of terrorism or**
 22 commonly used as consideration for a violation of IC 35-48-4
 23 (other than items subject to forfeiture under IC 16-42-20-5 or
 24 IC 16-6-8.5-5.1 before its repeal):
 25 (A) furnished or intended to be furnished by any person in
 26 exchange for an act that is in violation of a criminal statute;
 27 (B) used to facilitate any violation of a criminal statute; or
 28 (C) traceable as proceeds of the violation of a criminal statute.
 29 (3) Any portion of real or personal property purchased with
 30 money that is traceable as a proceed of a violation of a criminal
 31 statute.
 32 (4) A vehicle that is used by a person to:
 33 (A) commit, attempt to commit, or conspire to commit;
 34 (B) facilitate the commission of; or
 35 (C) escape from the commission of;
 36 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 37 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 38 (IC 35-42-4-3), ~~or~~ child exploitation (IC 35-42-4-4), **or an**
 39 **offense under IC 35-47 as part of or in furtherance of an act**
 40 **of terrorism.**
 41 (5) Real property owned by a person who uses it to commit any of
 42 the following as a Class A felony, a Class B felony, or a Class C

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felony:

(A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class

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C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. The court's order may permit the agency to use the property for a period not to exceed three (3) years. However, the order must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

(d) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

(1) determine the amount of law enforcement costs; and

(2) order that:

(A) the property, if it is not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized, and if the property is a vehicle, this sale must occur after any period of use specified in subsection (c);

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be:

(i) deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; or

(ii) deposited in the general fund of a unit if the property was seized by a local law enforcement agency of the unit for an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as part of or in

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1 **furtherance of an act of terrorism; and**
 2 (D) any excess in value of the proceeds or the money over the
 3 law enforcement costs be forfeited and transferred to the
 4 treasurer of state for deposit in the common school fund.
 5 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
 6 before its repeal) is transferred:
 7 (1) after its seizure, but before an action is filed under section 3
 8 of this chapter (or IC 34-4-30.1-3 before its repeal); or
 9 (2) when an action filed under section 3 of this chapter (or
 10 IC 34-4-30.1-3 before its repeal) is pending;
 11 the person to whom the property is transferred must establish an
 12 ownership interest of record as a bona fide purchaser for value. A
 13 person is a bona fide purchaser for value under this section if the
 14 person, at the time of the transfer, did not have reasonable cause to
 15 believe that the property was subject to forfeiture under this chapter.
 16 (f) If the property seized was an unlawful telecommunications
 17 device (as defined in IC 35-45-13-6) or plans, instructions, or
 18 publications used to commit an offense under IC 35-45-13, the court
 19 may order the sheriff of the county in which the person was convicted
 20 of an offense under IC 35-45-13 to destroy as contraband or to
 21 otherwise lawfully dispose of the property.

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